We express no opinion on the point argued before us that in an administration suit an administrator may be compelled to sell a Malay holding in a Reservation in order to pay debts of the estate, or on what appears to be corollary, whether an owner of a Malay holding could be attached under judgment debtor proceedings for refusal to sell his holding to satisfy a judgment debt.

The appeal is allowed and the case remitted to the Judge at Ipoh to decide whether or not to allow the application for leave to sell the land having regard to the fact that it is not unlawful for the administrator to sell the land to a Malay if he wishes to do so in order to pay the just debts of the Estate.

Costs to both parties to come out of the estate.

*Appeal allowed.*

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[ORIGINAL CRIMINAL JURISDICTION]

CUSSEN, J.

**June 5, 1939.**

## PUBLIC PROSECUTOR v. RAMASAMY.

*Criminal Procedure Code (Cap. 6) Ss. 107, 113—statement made in the course of police investigation—inadmissibility in evidence of—first information—admissibility of.*

If the fact that an investigation has commenced and is being conducted in some form or other is the cause or occasion of a statement being made, or if the statement results or proceeds from any act done in the investigation, then the statement is made in the course of the investigation within the meaning and intent of, and is inadmissible under, Section 113 of the Criminal Procedure Code.

On the evening of the 4th September 1938, one T., whose death was the subject of enquiry at the trial of this case, was severely injured. On his way to the hospital in a bus a halt was made outside the Sentul Police Station and a Police Constable at the Station was informed of the fact. As T. was severely wounded the bus went straight on to the hospital and the Police Constable made a report in the Station Report Book at 7.20 p.m. A sergeant and a lance corporal were informed of the report. Thereupon investigation commenced and the sergeant proceeded to the hospital to see T. The lance corporal remained on duty in the Station. The accused arrived at the Station at about 7.30 p.m. and spoke to the lance corporal complaining that he had been stabbed by T. The corporal saw that he had a wound on his left arm. Before the lance corporal had time to record the complaint, he received at 7.35 p.m. a telephone call from the sergeant at the hospital. The sergeant enquired if a man named R. had come to the Station. The lance corporal replied in the affirmative. The sergeant then told the lance corporal that T. was in a very serious condition and he ordered the lance corporal .to arrest the man named R. (that is, the accused). Thereupon the lance corporal arrested the accused, telling him that he was being so arrested for causing injuries to T. The arrest was effected at 7.38 p.m. At 7.37 p.m. the lance corporal received instructions by telephone from a Sub-Inspector to record the report of the accused. The lance corporal did so, the report being completed at 7.45 p.m. At the trial of the accused for murder, for the injured man died shortly after the first telephone call from the hospital, counsel for the defence objected to the admission of the report as being a statement made in the course of police investigation.

**Held,** that in so far as it referred to the complaint of injuries, the statement objected to was in the nature of a first information under section 107 of the Criminal Procedure Code and was admissible in evidence and that, in so far as it was made in reply to the charge made against the accused, the statement was made in the course of a police investigation and should be excluded under section 113 (i) of the Criminal Procedure Code.

CRIMINAL TRIAL.

*Davies,* Deputy Legal Adviser, and *Draper,* Deputy Public Prosecutor, for the Public Prosecutor.

*Rintoul* for the Accused.

*Cur. Adv. Vult.*

**Cussen, J.**—The Prosecution tenders in evidence a document which contains a statement made by the accused. The contents of this document are clearly relevant in this trial.

Counsel for the Defence objects to the admission of this documentary statement on the ground that it is excluded by section 113 (i) of the Criminal Procedure Code as it is a statement made in the course of a Police investigation.

Section 113 (i) reads—

> "No statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be signed by the person making it, nor shall such statement, save as herein provided, be used as evidence."

That is the only ground on which objection to the admission of this document is based.

The question then which I have to decide is whether this statement is or is not a statement made in the course of a police investigation.

The onus of proving that it is rests upon the Defence.

In order to discharge that onus of proof the most that the Defence has to do is to show that it is probable that the statement was made in the course of an investigation. The difficulty lies in the meaning and application of words "in the course of."

Without attempting anything in the nature of an exhaustive definition of what these words cover this much can, I think, be stated with certainty. If the

fact that the investigation has commenced and is being carried on in some form or other is the cause or at any rate the necessary occasion of the statement being made, or if the statement results or proceeds from any act done in the investigation then the statement is made in the course of the investigation.

The question is one to be determined in each particular case on consideration of all the circumstances attendant on the making of the statement.

I will now set out the facts as I find them so far as is necessary for the determination of this question.

Thangapragasam, whose death is the subject matter of this trial, was severely injured on the evening of 4th September. On the way to hospital in a bus—a halt was made outside Sentul Police Station—a Police Constable (No. 832) at the Station was informed—as Thangapragasam was very severely wounded the bus went straight on to the hospital and the Police Constable made a Report in the Station Report Book (Report No. 849/38) at 7.20 p.m.

The Sergeant No. 1809 and the Lance Corporal 1413 were informed of the Report.

Investigation at once commenced. The Sergeant proceeded to the hospital to see the injured man. The Lance Corporal remained on duty in the Charge Room in the Station.

Shortly after this the accused Ramasamy arrived at the Police Station with his wife and children at about 7.30 p.m.

He spoke to the Lance Corporal, complaining that he had been stabbed by a Tamil named Thangapragasam.

The Corporal saw he had a wound on his left arm.

Before the Lance Corporal had time to record the complaint, he received at 7.35 p.m. a telephone call from the Sergeant at the hospital.

The Sergeant inquired if a man named Ramasamy had come to the Police Station. The Lance Corporal replied that he had. The Sergeant then told the Lance Corporal that the injured man at the hospital was in a very serious state (in fact he died within three minutes after this telephone call, another telephone call to that effect being received from the Sergeant at 7.38 p.m.) and he ordered the Lance Corporal to arrest the man Ramasamy. Thereupon the Lance Corporal arrested the accused, telling him he was being so arrested for causing the injuries to the Tamil Thangapragasam. The arrest was made at 7.38 p.m.

Just before, at 7.37 p.m., the Lance Corporal received instructions by telephone from Che Sub-Inspector Alias to record the Report of the accused.

Thereupon the Lance Corporal did so, the recording being completed at 7.45 p.m.

It was taken down in the Station Report book on the usual form and according to the correct procedure. It is Report No. 850/38. It is this document the admissibility of which is in dispute.

Counsel for the Defence says that in view of the fact that the accused was under arrest and considering all the surrounding circumstances this document, notwithstanding its form, is in reality and in substance a statement made in the course of a police investigation and so inadmissible under section 113 of the Criminal Procedure Code.

The learned Deputy Public Prosecutor relies upon the statement having been recorded as a Report—as a First Information under section 107 of the Criminal Procedure Code—all the provisions of the section having been complied with.

He stresses that the accused came to make a Report—to give information respecting an offence committed against himself—and that, even though he had been arrested, he was entitled to give and it was correct and the duty of the Police to record his information of an offence committed against himself.

He points out that it was an entirely separate and distinct charge from the charge on which he had been arrested.

The accused complained of an offence consisting in his being stabbed by Thangapragasam whereas the offence for which he had just been arrested was his having stabbed Thangapragasam.

Now in my opinion the fact that the accused was under arrest is not conclusive that this statement is a statement made in the course of the investigation any more than the fact that it is in form a First Information under section 107 and was so recorded by the Lance Corporal is conclusive to the contrary.

Perhaps I should make it clear, if I have not done so, that I have no doubt whatever that the Lance Corporal *bona fide* took and recorded it as a First Information or Police Report.

It now remains to examine this document itself. It is at once evident that it falls into two parts. The first part contains the complaint of the offence against himself—it reads:—

> "At 6.10 p.m. on 4.9.38 I was in my house cleaning the lamp when a Tamil named Thangapragasam came and asked for money owing to him—I owed him $154/-. I replied how can I have money now not having yet received my wages. Thereupon he struck me with a knife once on the left arm."

That is the complaint he made to the Lance Corporal immediately on his arrival at the Police Station—and on all the evidence I have no doubt whatever that he came with the intention of making that complaint and that it originated from himself alone and was in every sense spontaneous. It in no way results or proceeds from anything done in the police investigation.

It is therefore not affected by section 113 and so is admissible.

But the second part, the remainder of this statement, is of quite a different nature. It is a denial that he had either caused the injuries to Thangapragasam or knew anything about it.

It reads:—

> "I did not strike him at all. I do not know who struck Thangapragasam."

This refers to the injuries to Thangapragasam for which the accused had just then been arrested. It is not a complaint—it is an answer to the charge made against him.

I do not think the accused had any intention of mentioning the injuries of Thangapragasam in his Report when he came to the Police Station even assuming that he knew of such injuries.

When persons come to a Police Station to make a complaint that other persons have assaulted them, they seldom or never make any mention of the inconvenient fact that such other persons have injuries perhaps far more serious than their own.

If accused did not know of Thangapragasam's injuries then it is quite clear that his statement referring to them is the result of and proceeds from his having been just that moment arrested and charged with causing them.

I have no doubt whatever that any statement made by any accused person in reply to the charge made when he is arrested is inadmissible under section 113. It is the direct result of an act done by the Police in the course of the investigation namely the arrest of an accused person.

I have very little doubt, in fact I think it is highly probable that the second part of this statement was made by the accused because he had just been arrested, and is in answer to the charge. It would be sufficient to merely conclude that it was just probable—for the standard of proof called for is no higher.

That second part I therefore hold to be inadmissible under section 113 of the Criminal Procedure Code.

*Objection upheld.*

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[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

May 1, 1939.

## RAMAN CHETTIAR

v.

## PALANIAPPA CHETTIAR AND ANOTHER.

(NEGRI SEMBILAN CIVIL SUIT No. 49 of 1937)

*Civil Procedure Code (Cap. 7) S. 369 (i)—security for costs—discretion of the Court.*

The power given to a Judge by section 369 (i) of the Civil Procedure Code is discretionary and one which the Court ought or ought not to exercise according to the circumstances of each case.

In a suit for a declaration that certain immovable properties were properties of a firm of which the plaintiff and the defendants were partners, the defendants, nearly a year and a half after the commencement of the suit, applied to the Registrar by summonses in chambers for an order that the plaintiff give security for costs on the grounds, amongst others, that the plaintiff had no immovable property within the Federated Malay States and that the plaintiff having left for India was not likely to return to the Federated Malay States.

**Held,** that, having regard to all the circumstances of this case, namely, (1) that the suit itself appeared to be a **bona fide** suit, and raised important issues for determination by the Court, (2) that there had been great delay in making the applications, for which the plaintiff was in no wise responsible, and (3) that there was reason to suppose that the applications had been brought rather for the purpose of embarrassing the plaintiff in the conduct of his suit than for any purpose which might serve the ends of justice, the Court would not order the plaintiff to give security for costs of the suit.

APPEAL from the order of the Registrar dated the 11th of March 1939.

*Jeff* for plaintiff.
*Rintoul* for 1st defendant.
*Ramani* for 2nd defendant.

*Cur. Adv. Vult.*